



## DEPARTMENT OF ENERGY

### Notice of Inquiry on Preparation of Report to Congress on the Price-Anderson Act

**AGENCY:** Office of General Counsel, DOE.

**ACTION:** Notice of inquiry on preparation of report to Congress on the Price-Anderson Act.

**SUMMARY:** The Department of Energy (the "Department" or "DOE") is requesting public comment concerning the need for continuation or modification of the provisions of the Price-Anderson Act (PAA) as administered by DOE. The PAA establishes a system of financial protection that encourages the safe and secure operation of nuclear power and other nuclear activities and assures equitable compensation of victims in the event of a nuclear incident.

Comments from the public will assist the Department in the preparation of its report on the PAA to be submitted to Congress by December 31, 2021, as required by the Atomic Energy Act of 1954 (AEA), as amended.

**DATES:** Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** You may submit comments to: [paareportnoi@hq.doe.gov](mailto:paareportnoi@hq.doe.gov). Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses undue hardship, please contact the Office of the General Counsel staff at (202) 586-2177 to discuss the need for alternative

arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

#### **FOR FURTHER INFORMATION CONTACT:**

Stewart Forbes, Office of the Assistant General Counsel for Civilian Nuclear Programs, U.S. Department of Energy, Room 6A-167, 1000 Independence Ave. SW., Washington, DC 20585; Email: [stewart.forbes@hq.doe.gov](mailto:stewart.forbes@hq.doe.gov); and Phone: (202) 586–2177.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The PAA was enacted in 1957 as an amendment to the AEA to encourage the development of nuclear power and nuclear activities by establishing a system of financial protection for persons who may be liable for and persons who may be injured by a nuclear incident.<sup>1</sup> DOE and the Nuclear Regulatory Commission (NRC) are authorized to administer the PAA system of financial protection with respect to DOE contractual activities and NRC licensees, respectively. While both the DOE and NRC systems of financial protection are underpinned by many of the same PAA principles and provisions, they are administered and applicable in different ways. In the DOE system, the PAA financial protection is in the form of a DOE indemnification and applies to all DOE contractors undertaking activities that involve the risk of a nuclear incident. In the NRC system, the PAA financial protection requirements for NRC licensees is in the form of

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<sup>1</sup> Price-Anderson Act, Pub. L. 85-256, 71 Stat. 576 (amending Atomic Energy Act of 1954, Pub. L. 83-703, codified as amended at 42 U.S.C. 2011 *et. seq.*). (For brevity, the Atomic Energy Act of 1954 will be cited throughout simply as “Atomic Energy Act” or AEA.) The pertinent sections of the PAA amended AEA § 11 and created AEA § 170, which are codified respectively at 42 U.S.C. 2014 and 2210.

insurance and/or indemnification, or neither depending on the type of nuclear installation and nuclear operator.<sup>2</sup> This Notice is focused on the PAA as applicable to and administered by DOE.

As explained previously, the DOE PAA system of financial protection is in the form of an indemnification by DOE (“DOE Price-Anderson indemnification”) for legal liability for a nuclear incident or a precautionary evacuation arising from activity under a DOE contract. The DOE Price-Anderson indemnification: (1) provides omnibus coverage of all persons who might be legally liable; (2) indemnifies fully all legal liability up to the statutory limit on such liability (as of 2018 approximately \$13.7 billion, inflation-adjusted, for a nuclear incident in the United States<sup>3</sup>); (3) covers all DOE contractual activity that might result in a nuclear incident in the United States; (4) is not subject to the availability of funds;<sup>4</sup> and (5) is mandatory and exclusive.

The PAA has been amended several times since enactment. The most recent amendment was the Price-Anderson Amendments Act of 2005 (“2005 Amendments”), passed as part of the Energy Policy Act of 2005 (Title VI, Subtitle A).<sup>5</sup> The 2005 Amendments extended the authority of DOE to grant the DOE Price-Anderson indemnification until December 31, 2025.<sup>6</sup> Along with the extension, Congress amended section 170p. of the AEA to mandate, as it had done with a prior extension, that DOE submit a report to Congress by December 31, 2021 (“2021 Report”) on whether provisions of the PAA should be continued, modified, or eliminated.<sup>7</sup>

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<sup>2</sup> See U.S. NUCLEAR REG. COMM’N, THE PRICE ANDERSON ACT – CROSSING THE BRIDGE TO THE NEXT CENTURY: A REPORT TO CONGRESS 1–8 (1998), <https://www.nrc.gov/docs/ML1217/ML12170A857.pdf> (describing the NRC PAA financial protection scheme); 10 CFR part 140, Financial Protection Requirements and Indemnity Agreements (NRC regulations implementing the PAA financial protection requirements for licensees and the indemnification and liability limitations); and Inflation Adjustments to the Price-Anderson Act Financial Protection Regulations, 83 FR 48202 (Sept. 24, 2018) (adjusting the total and maximum deferred premiums under the PAA for certain reactors).

<sup>3</sup> Adjustment of Indemnification Amount for Inflation, 83 FR 49374 (Oct. 1, 2018) (adjusting the statutory public liability limit to the present \$13.7 billion).

<sup>4</sup> Price-Anderson Act, *supra* note 1, at § 4 (amending Atomic Energy Act § 170j., codified as amended at 42 U.S.C. 2210(j)).

<sup>5</sup> Price-Anderson Amendments Act of 2005, Pub. L. 109-58, tit. VI, 119 Stat. 779 (amending Atomic Energy Act § 170, codified as amended at 42 U.S.C. 2210).

<sup>6</sup> *Id.* at tit. VI, § 602(b) (amending Atomic Energy Act § 170d.(1)(A), codified as amended at 42 U.S.C. 2210(d)(1)(A)). The NRC’s authority for the PAA system of financial protection was similarly extended.

<sup>7</sup> *Id.* at tit. VI, § 606 (amending Atomic Energy Act § 170p., codified as amended at 42 U.S.C. 2210(p)). As amended, section 170p. of the AEA requires the Secretary of Energy and the NRC to “submit to the Congress by December 31, 2021, detailed reports concerning the need for continuation or modification of the provisions of [the

DOE values input from the public on the efficacy and operation of the PAA. DOE is issuing this Notice of Inquiry (“Notice” or NOI) to solicit comments from the public and interested stakeholders to assist DOE in the development of its recommendations as to whether provisions of the PAA should be continued, modified, or eliminated.

This NOI is similar to a Notice of Inquiry published in 1997 (“1997 NOI”).<sup>8</sup> In 1998, DOE submitted a report to Congress pursuant to then-applicable section 170p. (“1998 Report”).<sup>9</sup> In preparing the 1998 Report, DOE published the 1997 NOI in the *Federal Register* requesting public comment to assist DOE in preparing the 1998 Report. The 1997 NOI included a comprehensive history and explanation of the PAA to assist members of the public in formulating comments.<sup>10</sup>

This NOI provides an update on significant changes in law or circumstances since the 1998 Report, including: (1) a summary of recommendations from the 1998 Report; (2) a summary of the 2005 Amendments; and (3) an update on the Convention on Supplementary Compensation for Nuclear Damage (the “Convention” or CSC) as it relates to the PAA. To facilitate the preparation of public comments, the NOI also includes a non-exhaustive list of questions and topics to be considered and that may be addressed by DOE in the 2021 Report. Last, to further assist the public in preparing comments, DOE recommends review and reference to the 1997 NOI and the 1998 Report, both of which provide a comprehensive history and explanation of the PAA.

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PAA], taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors and shall include recommendations as to the repeal or modification of any of the provisions of [the PAA].” 42 U.S.C. 2210(p). The DOE and NRC will each submit their own report to Congress.

<sup>8</sup> Preparation of Report to Congress on Price-Anderson Act, 62 FR 68272 (December 31, 1997), <https://www.govinfo.gov/content/pkg/FR-1997-12-31/pdf/97-34036.pdf> (*the published 1997 NOI, to be referenced as “1997 NOI”*).

<sup>9</sup> U.S. DEP’T OF ENERGY, REPORT TO CONGRESS ON THE PRICE-ANDERSON ACT (1998), <https://www.energy.gov/sites/prod/files/gcprod/documents/paa-rep.pdf> (to be referenced as “1998 REPORT”). Prior to its amendment in the Energy Policy Act of 2005, 42 U.S.C. 2210(p) mandated this report’s submission by August 1, 1998. *Supra* note 7.

<sup>10</sup> 1997 NOI, *supra* note 8.

## II. Significant Updates

### 1. 1998 Report to Congress

In 1988, Congress passed the Price-Anderson Amendments Act of 1988 (“1988 Amendments”), ushering in several new and updated provisions in the PAA: it increased the amount of the indemnification from \$500 million to \$9.43 billion; made the DOE indemnification mandatory in all DOE contracts involving the risk of a nuclear incident; and established a system of civil penalties for DOE contractors, subcontractors, and suppliers covered by the indemnification.<sup>11</sup> In the 1988 Amendments, Congress also extended authority for the DOE Price-Anderson indemnification to August 1, 2002<sup>12</sup> and mandated that DOE submit a report to Congress in 1998, four years prior to the expiration of authorization of the PAA, on the need for its continuation, modification, or elimination.<sup>13</sup>

DOE issued the required report, recommending renewal of the PAA as being in the “best interests of DOE, its contractors, its subcontractors and suppliers, and the public.”<sup>14</sup> The 1998 Report included five key recommendations: (1) DOE indemnification should continue as-is; (2) DOE indemnification amounts “should not be decreased”; (3) “Broad and mandatory coverage” for contracted activities should continue to be provided by DOE indemnification; (4) DOE should have “continued authority to impose civil penalties for violations of nuclear safety requirements by for-profit contractors, subcontractors and suppliers”; and (5) the CSC “should be ratified and conforming amendments to the [PAA]” be adopted.<sup>15</sup> In sum, DOE concluded that continuation of the PAA indemnification without any substantial change was essential to the Department’s ability to fulfill its statutory missions; provided protection to members of the

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<sup>11</sup> Price-Anderson Amendments Act of 1988, Pub. L. 100-408, 102 Stat. 1066 (amending Atomic Energy Act §§ 11, 170, codified as amended at 42 U.S.C. 2014, 2210).

<sup>12</sup> *Id.* at § 3 (amending Atomic Energy Act § 170c., codified as amended at 42 U.S.C. 2210(d)).

<sup>13</sup> *Id.* at § 12(2) (amending Atomic Energy Act § 170p., codified as amended at 42 U.S.C. 2210(p)).

<sup>14</sup> 1998 REPORT, *supra* note 9, at 1.

<sup>15</sup> *Id.* at 2.

public that may be affected by DOE's nuclear activities; and was a cost-effective option without any satisfactory alternative.<sup>16</sup>

## **2. 2005 Amendments**

After the 1988 Amendments, the 2005 Amendments were the next substantial set of changes to the PAA. Passed as part of the Energy Policy Act of 2005, the Price-Anderson Amendments Act of 2005 amended DOE authorities<sup>17</sup> to: (1) increase the liability limit and the Department's indemnification amount for DOE contractors in the case of nuclear incidents within the United States. to \$10 billion, to be adjusted every five years for inflation; (2) increase the liability limit and the Department's indemnification amount for DOE contractors in the case of certain nuclear incidents outside the United States. from \$100 million to \$500 million; and (3) modify section 234A of the AEA—which imposes civil penalties on DOE contractors covered by PAA indemnification for violations of DOE nuclear safety regulations— in regard to nonprofit entities that are DOE contractors. Specifically, the modifications to section 234A rescinded the automatic remission of civil penalties for DOE contractors in violation of nuclear safety regulations that are nonprofit educational institutions and repealed the exemption from such penalties for seven named entities. In its place, the 2005 Amendments imposed a limitation on civil penalties for not-for-profit contractors, subcontractors, or suppliers to not exceed the total amount of fees paid within any 1-year period under the contract under which the violation occurs.<sup>18</sup> In addition, the 2005 Amendments re-instituted the DOE mandate under section 170p. to report to Congress on the need for continuation, modification or elimination of PAA

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<sup>16</sup> *Id.* at 1.

<sup>17</sup> The 2005 Amendments modified certain authorities applicable to either or both the NRC and DOE. This Notice focuses on those modifications applicable to DOE and does not address the modifications specific to the NRC.

<sup>18</sup> Price-Anderson Amendments Act of 2005, *supra* note 2, at tit. IV, §§ 604–05, 610 (amending Atomic Energy Act § 170, 234A.b, codified at 42 U.S.C. 2210(d)–(e), 2282a).

provisions, with a due date of December 31, 2021, four years prior to the 2025 expiration of the extended PAA authority.<sup>19</sup>

In response to the 2005 Amendments, DOE amended its regulations in 10 CFR part 820, Procedural Rules for DOE Nuclear Activities, to implement the new requirements concerning civil penalty assessments against certain DOE contractors, subcontractors, and suppliers.<sup>20</sup> Further in compliance with the 2005 Amendments, DOE has reset and published in the *Federal Register* every 5 years an inflation-adjustment to the liability limit and DOE indemnification amount, currently set at approximately \$13.7 billion based on a 2018 adjustment.<sup>21</sup> The increases in indemnification amounts (other than the inflation adjustments) required only that DOE update its contracting policies to reflect the new indemnification limits for nuclear incidents occurring after the effective date of the 2005 Amendments (i.e., August, 8, 2005).<sup>22</sup>

The preparation of the report to Congress on the need for continuation, modification or elimination of PAA provisions (which is the subject of this Notice) is one of the remaining actions to be taken by DOE in accordance with the 2005 Amendments.

### **3. Convention on Supplementary Compensation for Nuclear Damage**

The CSC is an international treaty adopted under the auspices of the International Atomic Energy Agency (IAEA) that establishes a global nuclear liability regime to address legal liability and compensation of victims in the event of a nuclear incident.<sup>23</sup> The CSC provides consistent rules

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<sup>19</sup> *Id.* at tit. IV, § 606 (amending Atomic Energy Act § 170p., codified at 42 U.S.C. 2210(p)). As previously noted, the reporting requirements of section 170p. also apply to the NRC, which is responsible to submit its own report to Congress. *Supra* note 7.

<sup>20</sup> Procedural Rules for DOE Nuclear Activities, 10 CFR 820.20. For historical background, *see* Procedural Rules for DOE Nuclear Activities, 73 FR 19761 (Apr. 11, 2008) (original notice of proposed rulemaking) and Procedural Rules for DOE Nuclear Activities, 74 FR 11830 (Mar. 20, 2009) (notice of issuance of the Final Rule).

<sup>21</sup> *Supra* text accompanying note 3.

<sup>22</sup> U.S. Dep't of Energy, Acquisition Letter on Implementation of the Price-Anderson Amendments Act of 2005, AL-2005-15 (Oct. 5, 2005), at 2, 3. AL-2005-15 also included contracting policy updates to implement aspects of the change in civil penalty assessments for certain not-for-profit contractors resulting from the 2005 Amendments.

<sup>23</sup> Convention on Supplementary Compensation for Nuclear Damage, Sept. 29, 1997, T.I.A.S. No. 15-415 (entered into force Apr. 15, 2015) (to be referenced as “Convention”). For the full text of the Convention and related information, *see* *Convention on Supplementary Compensation for Nuclear Damage*, INT’L ATOMIC ENERGY AGENCY, <https://www.iaea.org/topics/nuclear-liability-conventions/convention-supplementary-compensation-nuclear-damage>.

for addressing legal liability for Parties to the CSC and, in the event of a nuclear incident in any Party's territory, requires all Parties to contribute to an international supplementary fund to provide an additional tier of compensation beyond that available under that Party's national law.<sup>24</sup> At the time of the 1998 Report and the 2005 Amendments, the United States had signed the Convention but not ratified it. In 2006, the Senate ratified the CSC, and in the following year, Congress passed the Energy Independence and Security Act of 2007 (EISA), which includes section 934, *Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation*, to implement the CSC in the United States.<sup>25</sup> The CSC went into effect in 2015,<sup>26</sup> and at present has eleven member countries, and nineteen signatory countries.<sup>27</sup>

The fundamental purposes of the CSC and the PAA are the same: to support the safe and secure development of the nuclear industry while at the same time ensuring a system of prompt, equitable and meaningful compensation in the event of a nuclear incident. The CSC, like other nuclear liability treaties,<sup>28</sup> achieves these purposes by requiring a country's domestic (national) nuclear liability law to comply with certain international nuclear liability law principles. For the United States, this would have required significant changes to the PAA were it not for a provision that permits the United States to satisfy the Convention if it maintains certain provisions of the PAA that were in effect on January 1, 1995 and continue in effect.<sup>29</sup> Those provisions relate primarily to the amount and availability of financial protection to compensate

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<sup>24</sup> Convention, *supra* note 23, at art. 2. "Territory" is not limited to a Party's geographic boundaries (e.g., ships operating under a contracting Party's flag are included). *Id.* at art. 5.

<sup>25</sup> Energy Independence and Security Act of 2007, Pub. L. 110-140, § 934, 121 Stat. 1492, 1741 (codified at 42 U.S.C. 17373).

<sup>26</sup> The CSC went into effect on April 15, 2015, in accordance with Article XX.1 of the Convention and acceptance by Japan. Convention, *supra* note 23, at art. 10; *see* INT'L ATOMIC ENERGY AGENCY, CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE 1 (2019), [https://www-legacy.iaea.org/Publications/Documents/Conventions/supcomp\\_status.pdf](https://www-legacy.iaea.org/Publications/Documents/Conventions/supcomp_status.pdf) (showing dates of ratification, acceptance, and approval for signatories, to be referenced as "CONVENTION STATUS"). Article XX.1 provides for entry into force of the Convention when at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument of ratification, acceptance, or approval with the Director General of the IAEA. Convention, *supra* note 23, at art. 10.

<sup>27</sup> CONVENTION STATUS, *supra* note 26.

<sup>28</sup> The other major nuclear liability treaties are the Paris Convention on Third Party Liability in the Field of Nuclear Energy, July 29, 1960, 1519 U.N.T.S. 329, and the Vienna Convention on Civil Liability for Nuclear Damage, May 21, 1963, 1063 U.N.T.S. 265.

<sup>29</sup> Convention, *supra* note 23, at Annex art. 2.



for nuclear damage in the event of a nuclear incident. The provisions of relevance to DOE's PAA authority<sup>30</sup> are: (1) DOE indemnification for reactors and certain other nuclear installations;<sup>31</sup> (2) definition of "person indemnified";<sup>32</sup> and (3) waiver of certain defenses with respect to "extraordinary nuclear occurrences."<sup>33</sup> As a result, any changes to these provisions that Congress may contemplate must be considered in light of the treaty obligations of the United States under the CSC.

Equally important, in ratifying and implementing the CSC, Congress ensured the legal and operational framework of the PAA is not affected by the compensation system established by the CSC. Section 934(a) of EISA specifies that the United States' contributions to the CSC international supplementary fund cannot upset settled expectations based on the liability regime established under the PAA.<sup>34</sup> For a nuclear incident covered by the PAA, funds already available under the PAA would be used to fulfill the United States' contributions without any increase in the amount of funds that NRC licensees must make available under the PAA. For a nuclear incident outside the United States not covered by the PAA, funds made available by a new retrospective risk pooling program for nuclear suppliers would be used to fulfill the United

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<sup>30</sup> The PAA provisions of specific relevance to the NRC align with: (1) NRC's financial protection requirements for reactors with capacity of 100 megawatts or greater (Atomic Energy Act § 170b., codified as amended at 42 U.S.C. 2210(b), corresponding to part of Convention provision Annex art. 2.1.c, requiring the national law of a Contracting Party to provide at least 1000 million SDRs of compensation for nuclear damage resulting from a nuclear incident at a power reactor); and (2) NRC's indemnification for reactors with capacity of 100 megawatts or less, and certain other nuclear installations (Atomic Energy Act § 170c., codified as amended at 42 U.S.C. 2210(c)), corresponding to part of Convention provision Annex art. 2.1.c, requiring the national law of a Contracting Party to provide at least 300 million SDRs of compensation for nuclear damage resulting from a nuclear incident at a non-power reactor and certain other nuclear installations.

<sup>31</sup> Atomic Energy Act § 170d., codified as amended at 42 U.S.C. 2210(d) (corresponding to Convention provision Annex art. 2.1.c in its entirety, requiring the national law of a Contracting Party to provide at least 1000 million SDRs of compensation for nuclear damage resulting from a nuclear incident at a power reactor and to provide at least 300 million SDRs of compensation for nuclear damage resulting from a nuclear incident at a non-power reactor and certain other nuclear installations).

<sup>32</sup> Atomic Energy Act § 11t., codified as amended at 42 U.S.C. 2014(t) (corresponding to Convention provision Annex art. 2.1.b, requiring the national law of a Contracting Party to indemnify any person who has legal liability for nuclear damage resulting from a nuclear incident).

<sup>33</sup> Atomic Energy Act § 170n., codified as amended at 42 U.S.C. 2210(n) (corresponding to Convention provision Annex art. 2.1.a, requiring the national law of a Contracting Party to impose strict liability with respect to a nuclear incident resulting in substantial offsite damage).

<sup>34</sup> Energy Independence and Security Act, *supra* note 25, at § 934(a)(1)(H)(i) (codified at 42 U.S.C. 17373(a)(1)(H)(i)).

States' contributions.<sup>35</sup> In all cases covered by the PAA, the United States would receive more funds from the CSC international fund than its contribution to that fund and the PAA public liability amount would be increased by that incremental amount.<sup>36</sup>

### III. List of Questions

The following is a non-exhaustive list of questions that may be relevant to the Congressional mandate of section 170p. that DOE report on “the need for continuation or modification of the provisions of [the PAA] taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors.”<sup>37</sup> While the list is current, many of the questions are reproduced in whole or in part from the 1997 NOI; they reflect questions and topics that remain pertinent today. In addition, while the list of questions may overlap with topics relevant to the NRC’s administration of the PAA, DOE requests that comments be directed to DOE and its activities as the NRC is responsible for its own report to Congress on the PAA. The list is included in this Notice to spur consideration of the PAA in its operation and effect and facilitate public comment. This list is not intended to limit or restrict the topics or areas of public comment, nor is it meant to indicate or commit that DOE will address all the questions in its report to Congress.

DOE requests the public to submit comments that identify the specific provision(s) of the PAA to which a position is expressed, be specific in regard to the DOE activity(s) in question, and explain in as much detail as possible the rationale for the position.

1. Should the DOE Price-Anderson indemnification be continued without modification?

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<sup>35</sup> *Id.* at §§ 934(a)(1)(I)–(J), 934(a)(2)(B) (codified at 42 U.S.C. 17373(a)(1)(I)–(J), 42 U.S.C. 17373(a)(2)(B)). The Department initiated a rulemaking to develop and implement the retrospective risk pooling program applicable to U.S. nuclear suppliers, to be codified at 10 CFR part 951. *See* Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 79 FR 75076 (Dec. 17, 2014). The proposed rulemaking is currently pending.

<sup>36</sup> Energy Independence and Security Act, *supra* note 25, at § 934(d) (codified at 42 U.S.C. 17373(d)).

<sup>37</sup> Atomic Energy Act § 170p., codified as amended at 42 U.S.C. 2210(p).

2. Should the DOE Price-Anderson indemnification be eliminated or made discretionary with respect to all or specific DOE activities? If discretionary, what procedures and criteria should be used to determine which activities or categories of activities should receive indemnification?
3. Should the DOE Price-Anderson indemnification continue to provide omnibus coverage of all persons legally liable for nuclear damage, or should it be restricted to DOE contractors or to DOE contractors, subcontractors, and suppliers?
4. If the DOE indemnification were not available for all or specified DOE activities, are there acceptable alternatives? Possible alternatives might include Pub. L. 85–804, section 162 of the AEA, general contract indemnity, no indemnity, or private insurance. To the extent possible in discussing alternatives, compare each alternative to the DOE Price-Anderson indemnification, including operation, cost, coverage, risk, and protection of potential claimants.
5. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE to perform its various missions? Explain your reasons for believing that performance of all or specific activities would or would not be affected.
6. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the willingness of existing or potential contractors to perform activities for DOE? Explain your reasons for believing that willingness to undertake all or specific activities would or would not be affected.
7. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of DOE contractors to obtain goods and services from subcontractors and suppliers? Explain your reasons for believing that the availability of goods and services for all or specific DOE activities would or would not be affected.
8. To what extent, if any, would the elimination of the DOE Price-Anderson indemnification affect the ability of claimants to receive compensation for nuclear damage resulting from a DOE

activity? Explain your reasons for believing the ability of claimants to be compensated for nuclear damage resulting from all or specific DOE activities would or would not be affected.

9. What is the existing and the potential availability of private insurance to cover liability for nuclear damage resulting from DOE activities? What would be the cost and the coverage of such insurance? To what extent, if any, would the availability, cost, and coverage be dependent on the type of activity involved? To what extent, if any, would the availability, cost, and coverage be dependent on whether the activity was a new activity or an existing activity? If the DOE Price-Anderson indemnification were not available, how would that affect the availability of insurance? Should DOE require contractors to obtain private insurance if the DOE Price-Anderson indemnification were not available?

10. Should the amount of the DOE Price-Anderson indemnification for all or specified DOE activities inside the United States (currently approximately \$13.7 billion, adjusted for inflation), and outside the United States (\$500 million) remain the same or be increased or decreased?

11. Should the limit on aggregate public liability be eliminated? If so, how should the resulting unlimited liability be funded? Does the rationale for the limit on aggregate public liability differ depending on whether the nuclear incident results from a DOE activity or from an activity of an NRC licensee?

12. Should the DOE Price-Anderson indemnification continue to cover DOE contractors and other persons when a nuclear incident results from their gross negligence or willful misconduct? If not, what would be the effects, if any, on: (1) the operation of the Price-Anderson system with respect to the nuclear incident, (2) other persons indemnified, (3) potential claimants, and (4) the cost of the nuclear incident to DOE? To what extent is it possible to minimize any detrimental effects on persons other than the person whose gross negligence or willful misconduct resulted in a nuclear incident? For example, what would be the effect if the United States government were given the right to seek reimbursement for the amount of the indemnification paid from a DOE

contractor or other person whose gross negligence or willful misconduct causes a nuclear incident?

13. Should the definition of nuclear incident be expanded to include occurrences that result from DOE activity outside the United States where such activity does not involve nuclear material owned by, and used by or under contract with, the United States? For example, should the DOE Price-Anderson indemnification be available for activities of DOE contractors that are undertaken outside the United States for purposes such as non-proliferation, nuclear risk reduction or improvement of nuclear safety? If so, should the DOE Price-Anderson indemnification for these additional activities be mandatory or discretionary?

14. Should the PAA be modified to extend its authorization beyond 2025, or to make permanent the authorization? If so, what would be the effect, if any, on the DOE Price-Anderson indemnification? What would be the effect, if any, on the United States' adherence to the CSC?

15. Should the PAA be modified as necessary to enable the United States to become a party to other international nuclear liability law treaties in addition to the CSC (that is, replace state tort law with the international nuclear liability principles, including channeling all legal liability exclusively to the operator on the basis of strict liability)? If so, what would be the effect, if any, on the system of financial protection, indemnification and compensation established by the PAA?

16. Should the PAA be modified to harmonize the operation of the PAA and the CSC? If so, describe the modification and explain the rationale.

17. Should section 934 of EISA be modified, especially with respect to the mechanisms for funding the United States' contribution to the CSC international fund? If so, describe the modification and explain the rationale.

18. Should the procedures in the PAA for administrative and judicial proceedings be modified?

If so, describe the modification and explain the rationale.

19. Should there be any modification in the types of claims covered by the PAA system?

20. What modifications in the PAA or its implementation, if any, could facilitate the prompt payment and settlement of claims?

21. Should the PAA be modified to address any unique circumstances or issues raised by the development and deployment of advanced nuclear reactors, including small modular reactors and microreactors? If so, describe the modification and explain the rationale.

22. Should the PAA be modified to address any unique circumstances or issues raised by research and development activities related to advanced nuclear reactors, including small modular reactors and microreactors at DOE sites or by DOE contractors? If so, describe the modification and explain the rationale.

23. Should the PAA be modified to address any issues raised by current or anticipated changes in the nuclear industry such as increased use of reactors with capacity of less than 100 megawatts, decreased use of reactors with capacity of greater than 100 megawatts, and deployment of fusion reactors? If so, describe the modification and explain the rationale.

24. Should the PAA be modified to address any environmental justice or equity and inclusion issues that may be associated with the implementation of the PAA, or the administration of claims covered by the PAA? If so, describe the modification and explain the rationale.

### **Signing Authority**

This document of the Department of Energy was signed on July 20, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the

Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC on July 21, 2021.

**Treena V. Garrett,**  
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[FR Doc. 2021-15840 Filed: 7/23/2021 8:45 am; Publication Date: 7/26/2021]